

**DRAFT**  
**Air Toxics Workgroup (ATW)**  
**Meeting Summary**  
**June 19, 2013 DRAFT**

**Members Present:**

James Clift, MI Environmental Council	Bob Sills, AQD
Steve Kohl, Warner Norcross & Judd	Brad Venman, NTH
Carrie Houtman, Dow Chemical Company (on telephone)	
Kim Essenmacher, GM	Mary Ann Dolehanty, AQD
Kory Groetsch, MDCH	Greg Ryan, DTE Energy
Joy Taylor Morgan, AQD, Facilitator	John Caudell, Fishbeck Thompson Carr & Huber
Stuart Batterman, UM	

**Members Absent:**

Brad van Guilder, Sierra Club

**Guests/Observers Present:**

Vince Hellwig, AQD Chief; Mike Depa, AQD; Dave Fiedler, Regulatory Affairs Officer, DEQ; Mary Maupin, SIP Unit Supervisor; Breanna Bukowski, SIP Unit.

The meeting began with the Facilitator asking the Workgroup members (Members) if they had any changes to the May meeting summary. Members wanted more time to review the meeting summary before being finalized and being placed on the ATW web site. The Facilitator also reminded the Members of the August 1<sup>st</sup> deadline they are under, and that the workgroup should focus on process and methodology to agree on and not necessarily on specific rule language so that the group can finish by their deadline.

**A-1(8) Stack Testing**

The Facilitator began with a discussion and summary of A-1(8) and presented a proposed draft recommendation based on the discussions with Members at the last several meetings. After going through a few edits, the following language was agreed to by the Members:

The AQD has clarified that the need for stack testing requirements will be determined on a case-by-case basis for compliance demonstration, and will not be required when it is not warranted. For example, routine testing of asphalt plants is no longer warranted. Also, the AQD will work together with EPA and the regulated community in further application of the ERT (emissions reporting tool) or other tools, to post stack test results on the AQD web page in a searchable format by X date.

This draft recommendation addresses the two key issues: when to require stack testing, and, providing a database as a resource tool. DEQ staff agreed to investigate if the resources could be allocated to develop and post a database on the AQD website, and what deadline could be considered, for discussion at the next meeting in July.

A Member asked how this DEQ intention would be memorialized, besides the ATW meeting summary. It was discussed that it could be implemented as an AQD Policy and Procedure. Members recognized that the development of a workable stack test database places a significant resource demand on AQD, but they emphasized that it should be a goal, and that initial steps should be taken. A member noted that the regulated community should also contribute to this effort, by entering data into the database.

#### **A-1 (9) Rule 228**

The Facilitator presented a proposed draft recommendation, based on previous meeting discussions:

Rule 228 should be retained with modification: the decision of when to apply the rule should be with the MDEQ Director and the language in the rule should change from “The department may determine, on a case-by-case basis...” to, “The Director may determine, on a case-by-case basis...”. The AQD should work cooperatively with applicants in discussing the specific need and focus for additional risk assessment information, and be flexible in sharing the burden of developing the additional information.

Some Members felt that in addition to the issue being elevated to the Director level, the rule language should provide additional boundaries on how the rule is applied. Additionally, one Member shared language redrafting Rule 228, to which another Member said that the language was too specific and they could not support it as written. The Facilitator requested that if any other Member wanted to develop different language for Rule 228, then that could be developed and shared prior to the July meeting for discussion at that meeting. One Member commented that Rule 228 was critical for use as a back stop, and the agency has an obligation to use this rule to adequately protect public health.

There was also discussion on the reliability of data utilized in the screening risk assessments. A Member suggested using a paper by Klimisch et al., 1997 (by BASF) which recommends using in assessments only studies with a reliability rating of 1 or 2. They stated that the UNEP and EPA have adopted that ranking system for their assessments. A Member said that the Klimisch paper was not the best system as it down grades peer reviewed literature to second class and it makes no sense to elevate lab reports to a higher level; just because a paper documents “GLP” (good laboratory practices) it is not impressive and often inadequate.

One Member said that Rule 228 had an effect in the pre-application phase, by getting applicants to consider what emission rate to propose in their application that would be as low as reasonably possible and would be hopefully approvable. However, the member added that some applicants dislike the lack of certainty in how the R 228 assessments will be conducted and what levels of impact will be approvable. One Member stated that *actual* exposures should be evaluated, while another Member stated that *potential* levels of exposure are more appropriate for such evaluations. DEQ staff stated that when Rule 228 has been applied, reasonable exposure scenarios are utilized that are specific to the source to be permitted. For example, local environmental data are utilized, such as actual contaminant data in local fish, air or water, when available.

#### **A-1(6): the TAC list**

The Facilitator presented a proposed draft recommendation, based on past meetings and discussions, that the Members could possibly agree on:

The AQD should pursue the approach described in the May 13, 2013 draft discussion paper to establish a defined list of TACs subject to R 225, with the authority to address other air toxics of concern in a specific PTI application, and with the authority to add and delete from the list based on the application of the same criteria described in the May 13, 2013 discussion paper for establishing the list (i.e., proposed additions would be carcinogens and air toxics that would have ITSLs lower than the 75th %ile, that are reasonably anticipated to appear in a PTI application). The proposed TAC list should be

specified in proposed rules for public comment. The proposed rules should also specify a procedure for posting for public comment any proposed additions or deletions to the list, and after considering the public comment, the agency should have the authority to immediately implement those changes prior to rulemaking to make the list changes in the rules. The initial TAC list should consist of approximately 750 air toxics, as listed in the May 13, 2013 list, with some adjustments, such as the addition of some additional PBTs as justifiable and methyl isocyanate, as discussed at the May 15, 2013 ATW meeting.

A couple of Members stated they felt the number of 750 was too large. Other Members did not agree; they reminded the Workgroup that the current list is infinity, and there are over 80,000 chemicals in commerce. From that perspective, 750 was actually a small number. A couple of Members pointed out that other states have a list closer to 300 or 400, but then it was noted that other states have unlimited lists. One Member suggested that TACs could be dropped off the list if the screening level was at 200 µg/m<sup>3</sup> or greater. This value was suggested because it is included in Rule 224 (as one of several criteria). One Member commented that this might be close to the 80<sup>th</sup> percentile in the distribution of all ITSL values (without regard to averaging times). Another Member said that the HAPs list and other states' lists of air toxics include chemical groups, and if the chemicals in our draft list were grouped together in categories (i.e. POM), then the list would be much smaller than 750. Staff noted that the focus has been on developing a valid methodology for establishing a defined list of TACs, and to attempt to build ATW consensus on that approach; any misgivings about the resulting number of TACs should involve consensus building for an alternative approach. Utilizing "group" names can make a list seem smaller than it actually is, but it reduces clarity and certainty with the list. Bob Sills was invited to discuss the TAC list issue with MMA at their next meeting on July 10<sup>th</sup>.

A Member mentioned that when MMA met with the Director recently, it was discussed that MMA may not agree with three issues. These are the TAC list of 750 substances, Rule 228, and, one other issue that the Member could not recall.

The Klimish paper's ranking scheme was discussed further. Some Members felt this paper's approach to ranking studies was important. DEQ staff and some Members had concerns with the paper's approach, and, that the approach seemed like an additional task that may not be needed. Staff felt that the issue may not warrant additional ATW meeting time for further discussion. Staff stated that they only use "reliable" study data to support SLs, and a justification document citing the key studies and showing the SL calculations is available upon request for each SL. Staff receives requests for specific SL justifications every few weeks, and provides them as pdf documents.

A related issue raised by a Member is that public comment should be accepted for not only the proposed TAC list, but also on the basis for the SLs. Staff agreed that some basic information can be provided along with the proposed TAC list for public comment, along with the public's ability to obtain specific SL justification documents. The Member also noted that some in the regulated community would like to have a more formal mechanism to force AQD to review SLs. Staff responded that AQD's long-held practice has been to accept and address comments, requests, additional toxicity studies, or alternative ways of interpreting key studies, and AQD has revised SLs as appropriate based on those requests.

The group agreed to revisit the TAC list issue at the next meeting, after the briefing for MMA.

### **A-1(7) Follow Other States**

The Facilitator presented a proposed draft recommendation, based on past meetings and discussions:

The AQD should be more consistent with other nearby states in deriving screening levels, by not utilizing a default screening level, by using a default annual averaging time rather than 24 hour averaging time for ITSLs based on EPA RfCs and RfDs, and by establishing acute screening levels to address concerns for acute toxicity.

Staff stated that although all state's programs vary, these changes are scientifically defensible and would make DEQ more consistent with other states. There was some discussion as to how this would be implemented, but there was general agreement and the Facilitator was able to check this recommendation off as being completed.

### **A-1(5) Pollution Control Projects**

Carrie Houtman gave a revised overview of the summary of what pollution control projects could be defined to include. Several comments were made by Members that they were not clear with what was being presented and they wanted specific examples.

What was presented:

*A Pollution Control Project* as identified in rule (*air toxics exemption citation*) means that a project meeting the following is exempt from Toxics review, provided the installation of equipment or implementation of the project causes no appreciable change in the quality, nature or quantity of emissions:

1. The installation of pollution control equipment as specified in Rule\_\_\_\_\_.
2. The addition of internal or external air pollution control equipment to an existing stationary source to comply with a new state or federal air quality regulation.
3. Construction of a facility or implementation of a project subject to a MACT standard.
4. Replacing a currently permitted raw material for an existing stationary source with a raw material.
5. Installing equipment that repurposes a material from waste into a product, raw material, or intermediate.
6. Installation or modification of equipment that reduces the likelihood of opening of pressure relief devices, and/or reduces fugitive emissions, and/or decreases the likelihood or frequency of shutdowns of process equipment where such shutdowns generate emissions which are not associated with normal operation.
7. Installation of larger vessels which allows for the consolidation of two or more vessels if the consolidation results in an overall reduction in the number of emission points and potential to emit.

The Workgroup agreed to delete bullet number five. There was significant discussion regarding bullet number four and Members mentioned that this seemed like too broad of an exemption. It was suggested that we could use the "meaningful change" (10% criteria) to exempt some of these projects. Members stated that examples are needed for #4, 6, and 7 to better understand

the situations proposed for exemption. It was noted that #6 could refer to projects designed to prevent malfunctions, which are already exempt under the Part 2 rules and which are covered in Malfunction Abatement Plans. Bullet #3 seems to mirror one of the ORR report's recommendations to exempt from R 225 any source subject to a MACT; this is being discussed separately. A Member said that the ORR committee's intent was to exempt older sources that had never undergone R 225 review, but which are making modifications under a MACT requirement and are thus currently subject to R 225 review. Bob Sills noted that the 1989 Air Toxics Policy Committee recommended that AQD should first start with the regulation of air toxics emissions from new and modified sources, and later address existing sources as they make modifications or as a separate initiative.

#### **A-1(4) Clean Energy**

There was very limited time to discuss the revised discussion paper. However, there was general agreement with the suggestion that engines, turbines, boilers, and process heaters burning solely natural gas, diesel fuel (#2 fuel oil), or biodiesel, of up to 100 MMBTU/hr, may be exempted from R 225, provided that the stack height is at least 1.5 times the building height.

A couple Members wanted more time to review the clean fuels discussion paper prior to the next meeting.

#### **Action Items to be Completed Prior to the Next ATW Meeting:**

- Members will send Joy any comments on the May 15<sup>th</sup> meeting summary by June 21<sup>st</sup>.
- Members may develop proposed R 228 language for distribution and discussion at the next meeting.
- Comments on A-1(5) Pollution Control Projects with examples should be sent to Carrie Houtman by July 17<sup>th</sup>.
- Bob Sills will attend the MMA meeting on July 10<sup>th</sup> to brief them on the ATW progress to date on the TAC list issue.
- John Caudell to develop alternative approach to the TAC list discussion paper, if no agreement occurs after the MMA meeting, by July 17<sup>th</sup>.
- Members will review the Clean Fuels Discussion Paper in time for the July 24<sup>th</sup> meeting.

#### **Action Items From Past Meetings that Still Need to be Completed:**

- John Caudell and Greg Ryan offered to develop a stack test template and share with the Members.

Meeting Summary prepared by: Joy Taylor Morgan, Facilitator, and Bob Sills, July 3rd, 2013.